

**FOX ROTHSCHILD LLP**

(formed in The Commonwealth Of Pennsylvania)

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

In re:	Chapter 11
LEXXA, INC.	Case No. 12-25747 GMB
Debtor.	
In re:	Chapter 11
BERNARDS OF MARLTON, LLC	Case No. 12-25751 GMB
Debtor.	Hearing Date: August 7, 2012 Response Deadline: July 31, 2012

**MOTION OF NOVA BANK FOR AN ORDER PROHIBITING  
THE DEBTORS' USE OF COLLATERAL  
WITHOUT ADEQUATE PROTECTION**

Pre-petition secured creditor Nova Bank f/k/a Nova Savings Bank ("Movant" or "Nova"), by and through its undersigned counsel, Fox Rothschild LLP, as and for its motion for an order prohibiting the Debtors' use of collateral without adequate protection (the "Motion"), states as follows:

**PARTIES**

1. Nova is a Pennsylvania state chartered commercial bank having an office at Westlakes Business Center, 1235 Westlakes Drive, Suite 420, Berwyn, PA 19312.

2. Lexxa, Inc. (“Lexxa”) is a corporation or other business entity that has as its place of business a day spa and salon at 100 Springdale Road, Cherry Hill, NJ 08003 (the “Cherry Hill location”). Lexxa is a debtor in possession under Chapter 11 Case No. 12-25747-GMB.

3. Bernards of Marlton, LLC (“Bernards”) is a limited liability company or other business entity that has as its place of business a day spa and salon at 795 Route 70, Marlton, NJ 08053 (the “Marlton location”). Bernards is a debtor in possession under Chapter 11 Case No. 12-25751-GMB.

4. Anthony Rossano is an adult individual, who, upon information and belief, is the sole owner and official of Lexxa and Bernards.

5. Carla Rossano is an adult individual, who, upon information and belief, is the spouse of Anthony Rossano. Carla Rossano is the sole owner of B2 Salon, LLC (“B2”), which has a Chapter 11 case pending in this District under Docket No. 12-21589-GMB (the “B2 Case”). (Anthony and Carla Rossano are herein sometimes together referred to as the “Rossanos”).

### **PROCEDURAL BACKGROUND**

6. Lexxa and Bernards (the “Debtors”) each filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* on June 20, 2012 (the “Petition Date”).

7. The Debtors have moved for the Court to jointly administer their bankruptcy cases together and with the related chapter 11 case of B2. The joint administration motion is returnable on July 24, 2012.

### **THE UNDERLYING FACTS**

**A. Loans to Lexxa**

8. On or about April 27, 2007, Nova made a \$700,000 commercial loan to Lexxa (the “\$700K Loan”) and in connection therewith Lexxa made, executed and delivered to Nova (i) a Business Loan Agreement (the “First Loan Agreement”) and (ii) a Promissory Note in the original amount of \$700,000.00 (the “First Promissory Note”), both dated April 27, 2007. True and correct copies of The First Loan Agreement and the First Promissory Note is attached hereto as Exhibit A and Exhibit B, respectively. The \$700K Loan was intended to be used by Lexxa to fund the tenant fit out acquisition and work on the Cherry Hill location. The First Promissory Note had a maturity date of May 1, 2012 – prior to the Petition Date.

9. On or about February 22, 2008, Nova made a \$286,000 commercial loan to Lexxa (the “\$286K Loan” and together with the \$700K Loan herein called the Nova Loans”) and in connection therewith Lexxa made, executed and delivered to Nova (ii) a Business Loan Agreement (the “Second Loan Agreement”) and (ii) a Promissory Note in the original amount of \$260,000.00 (the “Second Promissory Note”), both dated February 22, 2008. True and correct copies of the Second Loan Agreement and the Second Promissory Note is attached hereto as Exhibit C and Exhibit D, respectively. The \$286K Loan was made to provide working capital to Lexxa for its salon business operated at the Cherry Hill location. The Second Promissory Note had a maturity date of March 1, 2013.

10. Prior to the Petition Date, both of the Nova Loans were in default and had been accelerated by written notice dated May 4, 2012 and directed to Anthony Rossano. Nova filed suit in the Law Division of the Superior Court of New Jersey to enforce the entire indebtedness in connection with the two (2) loans (the “Indebtedness”) on or about June 12, 2012.

**B. Guaranty by Bernards**

11. In connection with the Nova Loans to Lexxa, Bernards made, executed and delivered to Nova (i) a Commercial Guaranty with Limited Liability Resolution of April 27, 2007 and (ii) ) a Commercial Guaranty with Limited Liability Resolution of February 22, 2008 (together, the “Bernard Guarantees”). True and correct copies of the Bernard Guarantees are attached hereto as Exhibit E and Exhibit F, respectively.

12. Pursuant to the Bernard Guarantees, Bernards is jointly and severally obligated with Lexxa and the other guarantors for payment in full of the entire Interestedness on connection with the Nova Loans.

**C. Collateral for the Indebtedness**

13. To secure the repayment of the Indebtedness to Nova on account of the Nova Loans to Lexxa, both of Lexxa and Bernards granted to Nova security interests in all of there respective assets, including the furniture, fixtures, machinery, equipment and all contents of the Cherry Hill location and the Marlton locations; all accounts, general intangibles, instruments, rents, monies, payments and all other rights, arising out of the sale, lease, consignment or other disposition of the forgoing property; and all products and proceeds of the disposition of any of the foregoing property (respectively, the “Property of Lexxa”, the “Property or Bernards” and collectively, the “Collateral”).

14. Nova’s security interest in the Property of Lexxa (the “Lexxa Security Interest”) was created by a Security Agreement made, executed and delivered to Nova by Lexxa on or about April 27, 2007 (the “Lexxa Security Agreement”), and perfected by the filing of a UCC-1 financing statement with the State of New Jersey Department of Treasury, the central filing office for New Jersey, on May 10, 2007 (the “Financing Statement”), and the Financing Statement was continued by a filing in the same office of a UCC-3 continuation statement on



December 9, 2011. Evidence of these UCC filings is set out in the UCC Search which is attached hereto as Exhibit G, and a true copy of the Lexxa Security Agreement is attached hereto as Exhibit H.

15. Nova's security interest in the Property of Bernards (the "Bernards Security Interest") was created by a Security Agreement made, executed and delivered to Nova by Bernards on or about April 27, 2007 (the "Bernards Security Agreement"), and perfected by the filing of a UCC-1 financing statement with the State of New Jersey Department of Treasury, the central filing office for New Jersey, on May 10, 2007 (the "Financing Statement"), and the Financing Statement was continued by a filing in the same office of a UCC-3 continuation statement on December 9, 2011. Evidence of these UCC filings is set out in the UCC Search which is attached hereto as Exhibit I, and a true copy of the Bernards Security Agreement is attached hereto as Exhibit J.

**D. Other Security**

16. The Indebtedness is also secured by personal guarantees from the Rossanos (the "Rossanao Guarantees") and by subordinate mortgages and rent assignments on three (3) residential properties in New Jersey owned by the Rossanos (the "Mortgage Collateral").

17. Based upon the loan balances due on prior mortgages (determined by information provided to Nova by the Rossanos), Nova has determined that the Mortgage Collateral is of no value and not worth the cost of pursuing.

**E. Operations of the DIP's**

18. Since the Petition Date, the Debtors remain in possession of their assets and continue to operate their respective businesses at the Cherry Hill and the Marlton locations at all times using Nova's Collateral.